

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES A. BIGELOW,

Plaintiff,

vs.

NORTHWEST TRUSTEE SERVICES,
INC.; GREEN TREE SERVICING, LLC;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, Inc.;
WRIGHT, FINLAY & ZAK, LLP; TICOR
TITLE COMPANY; NATIONWIDE TITLE
CLEARING; FIRST AMERICAN TITLE
INSURANCE COMPANY; RENEE
PARKER; and DOE DEFENDANTS 1 – 20,

Defendants.

Case No.: 3:14-cv-05798-BHS

CONFIDENTIALITY ORDER

The parties to this Confidentiality Order shall abide by the terms of this Order:

1. **Scope.** All materials produced or adduced in the course of discovery, including initial disclosures, responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively “documents”) shall be subject to this Order concerning Confidential Information as defined below. This Order is

1 subject to the Local Rules of this District and the Federal Rules of Civil Procedure on
2 matters of procedure and calculation of time periods.

- 3 2. **Confidential Information.** As used in this Order, “Confidential Information” means
4 information designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”
5 by the producing party that falls within one or more of the following categories: (a)
6 information prohibited from disclosure by state; (b) information that reveals trade secrets;
7 (c) research, technical, commercial or financial information that the party has maintained
8 as confidential; (d) medical information concerning any individual; (e) personal identity
9 information such as credit card numbers or Social Security numbers; (f) non-public
10 income tax returns (including attached schedules and forms), W-2 forms and 1099 forms;
11 or (g) personnel or employment records of a person who is not a party to this case.
12 Information or documents that are available to the public may not be designated as
13 Confidential Information.
14

15 3. **Designation.**

- 16 (A) A party may designate a document as Confidential Information for protection under
17 this Order by placing or affixing the words “CONFIDENTIAL – SUBJECT TO
18 PROTECTIVE ORDER” on the document and on all copies in a manner that will not
19 interfere with the legibility of the document. As used in this Order, “copies” includes
20 electronic images, duplicates, extracts, summaries or descriptions that contain the
21 Confidential Information. The marking “CONFIDENTIAL – SUBJECT TO
22 PROTECTIVE ORDER” shall be applied prior to or at the time the documents are
23 produced or disclosed. Applying the marking “CONFIDENTIAL – SUBJECT TO
24 PROTECTIVE ORDER” to a document does not mean that the document has any
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1 status or protection by statute or otherwise except to the extent and for the purposes
2 of this Order. Any copies that are made of any document marked "CONFIDENTIAL
3 – SUBJECT TO PROTECTIVE ORDER" shall also be so marked, except that
4 indices, electronic databases, lists, or documents that do not contain substantial
5 portions or images of the text of marked documents and do not otherwise disclose the
6 substance of the Confidential Information are not required to be marked.

7
8 (B) The designation of a document as Confidential Information is a certification by an
9 attorney or a party appearing *pro se* that the document contains Confidential
10 Information as defined in this Order.¹

11 4. **Depositions.** Deposition testimony is protected by this Order only if designated as
12 "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" on the record at the time
13 the testimony is taken. Such designation shall be specific as to the portions that contain
14 Confidential Information. Deposition testimony so designated shall be treated as
15 Confidential Information protected by this Order until fourteen days after delivery of the
16 transcript by the court reporter to any party or the witness. Within fourteen days after
17 delivery of the transcript, a designating party may serve a Notice of Designation to all
18 parties of record identifying the specific portions of the transcript that are designated
19 Confidential Information, and thereafter those portions identified in the Notice of
20 Designation shall be protected under the terms of this Order. The failure to serve a
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23 ¹ An attorney who reviews the documents and designates them as "CONFIDENTIAL - SUBJECT TO
24 PROTECTIVE ORDER" must be admitted to the Bar of at least one state but need not be admitted to practice in
25 the District of Western Washington unless the lawyer is appearing generally in the case on behalf of a party. By
designating documents confidential pursuant to this Order, counsel submits to the jurisdiction and sanctions of
this Court on the subject matter of the designation.

1 timely Notice of Designation waives any designation of deposition testimony as
2 Confidential Information that was made on the record of the deposition, unless otherwise
3 ordered by the Court.

4
5 **5. Protection of Confidential Material.**

6 (A) **General Provisions.** Confidential Information shall not be used or disclosed by the
7 parties, counsel for the parties or any other persons identified in subparagraph B for
8 any purpose whatsoever other than in this litigation, including any appeal thereof. In a
9 putative class action, Confidential Information may be disclosed only to the named
10 plaintiff(s) and not to any other member of the putative class unless and until a class
11 including the putative member has been certified.

12 (B) **Limited Third-Party Disclosures.** The parties and counsel for the parties shall not
13 disclose or permit the disclosure of any Confidential Information to any third person
14 or entity except as set forth in subparagraphs (1)-(9). Subject to these requirements,
15 the following categories of persons may be allowed to review Confidential
16 Information:

17 (1) **Counsel.** Counsel for the parties and employees of counsel who have
18 responsibility for the action;

19 (2) **Parties.** Individual parties and employees of a party but only to the extent counsel
20 determines in good faith that the employee's assistance is reasonably necessary to
21 the conduct of the litigation in which the information is disclosed;

22 (3) **The Court and its personnel;**

23 (4) **Court Reporters and Recorders.** Court reporters and recorders engaged for
24 depositions;
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1 (5) **Contractors.** Those persons specifically engaged for the limited purpose of
2 making copies of documents or organizing or processing documents, including
3 outside vendors hired to process electronically stored documents;

4 (6) **Consultants and Experts.** Consultants, investigators, or experts employed by the
5 parties or counsel for the parties to assist in the preparation and trial of this action
6 but only after such persons have completed the certification contained in
7 Attachment A, Acknowledgment of Understanding and Agreement to Be Bound;
8

9 (7) **Witnesses at Depositions.** During their depositions, witnesses in this action to
10 whom disclosure is reasonably necessary. Witnesses shall not retain a copy of
11 documents containing Confidential Information, except witnesses may receive a
12 copy of all exhibits marked at their depositions in connection with review of the
13 transcripts. Pages of transcribed deposition testimony or exhibits to depositions
14 that are designated as Confidential Information pursuant to the process set out in
15 this Agreement must be separately bound by the court reporter and may not be
16 disclosed to anyone except as permitted under this Agreement.

17 (8) **Author or recipient.** The author or recipient of the document (not including
18 person who received the document in the course of litigation); and
19

20 (9) **Others by Consent.** Other persons only by written consent of the producing party
21 or upon order of the Court and on such conditions as may be agreed or ordered.

22 (C) **Control of Documents.** Counsel for the parties shall make reasonable efforts to
23 prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel
24 shall maintain the originals of the forms signed by persons acknowledging their
25 obligations under this Order for a period of 63 days after the termination of the case.

- 1 6. **Inadvertent Failure to Designate.** An inadvertent failure to designate a document as
2 Confidential Information does not, standing alone, waive the right to so designate the
3 document; provided, however, that a failure to serve a timely Notice of Designation of
4 deposition testimony as required by this Order, even if inadvertent, waives any protection
5 for deposition testimony. If a party designates a document as Confidential Information
6 after it was initially produced, the receiving party, on notification of the designation, must
7 make a reasonable effort to assure that the document is treated in accordance with the
8 provisions of this Order. No party shall be found to have violated this Order for failing to
9 maintain the confidentiality of material during a time when that material has not been
10 designated Confidential Information, even where the failure to so designate was
11 inadvertent and where the material is subsequently designated Confidential Information.
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- 13 7. **Filing of Confidential Information.** This Order does not, by itself, authorize the filing
14 of any document under seal. Any party wishing to file a document designated as
15 Confidential Information in connection with a motion, brief or other submission to the
16 Court must comply with the Local Rules.
17
- 18 8. **No Greater Protection of Specific Documents.** Except on privilege grounds not
19 addressed by this Order, no party may withhold information from discovery on the ground
20 that it requires protection greater than that afforded by this Order unless the party moves
21 for an order providing such special protection.
- 22 9. **Challenges by a Party to Designation as Confidential Information.** The designation of
23 any material or documents as Confidential Information is subject to challenge by any
24 party. The following procedure shall apply to any such challenge.
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1 (A) **Meet and Confer.** A party challenging the designation of Confidential Information
2 must do so in good faith and must begin the process by conferring directly with
3 counsel for the designating party. In conferring, the challenging party must explain
4 the basis for its belief that the confidentiality designation was not proper and must
5 give the designating party an opportunity to review the designated material, to
6 reconsider the designation, and, if no change in designation is offered, to explain the
7 basis for the designation. The designating party must respond to the challenge within
8 seven (7) business days.
9

10 (B) **Judicial Intervention.** A party that elects to challenge a confidentiality designation
11 may file and serve a motion that identifies the challenged material and sets forth in
12 detail the basis for the challenge. Each such motion must be accompanied by a
13 competent declaration that affirms that the movant has complied with the meet and
14 confer requirements of this procedure. Until the Court rules on the challenge, all
15 parties shall continue to treat the materials as Confidential Information under the terms
16 of this Order.
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18 10. **Action by the Court.** Applications to the Court for an order relating to materials or
19 documents designated Confidential Information shall be by motion. Nothing in this Order
20 or any action or agreement of a party under this Order limits the Court's power to make
21 orders concerning the disclosure of documents produced in discovery or at trial.

22 11. **Use of Confidential Documents or Information at Trial.** Nothing in this Order shall be
23 construed to affect the use of any document, material, or information at any trial or
24 hearing. A party that intends to present or that anticipates that another party may present
25 Confidential Information at a hearing or trial shall bring that issue to the Court's and

1 parties' attention by motion or in a pretrial memorandum without disclosing the
2 Confidential Information. The Court may thereafter make such orders as are necessary to
3 govern the use of such documents or information at trial.

4 **12. Confidential Information Subpoenaed or Ordered Produced in Other Litigation.**

5 (A) If a receiving party is served with a subpoena or an order issued in other litigation that
6 would compel disclosure of any material or document designated in this action as
7 Confidential Information, the receiving party must so notify the designating party, in
8 writing, immediately and in no event more than three court days after receiving the
9 subpoena or order. Such notification must include a copy of the subpoena or court
10 order.

11
12 (B) The receiving party also must immediately inform in writing the party who caused the
13 subpoena or order to issue in the other litigation that some or all of the material
14 covered by the subpoena or order is the subject of this Order. In addition, the
15 receiving party must deliver a copy of this Order promptly to the party in the other
16 action that caused the subpoena to issue.

17 (C) The purpose of imposing these duties is to alert the interested persons to the existence
18 of this Order and to afford the designating party in this case an opportunity to try to
19 protect its Confidential Information in the court from which the subpoena or order
20 issued. The designating party shall bear the burden and the expense of seeking
21 protection in that court of its Confidential Information, and nothing in these provisions
22 should be construed as authorizing or encouraging a receiving party in this action to
23 disobey a lawful directive from another court. The obligations set forth in this
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paragraph remain in effect while the party has in its possession, custody or control Confidential Information by the other party to this case.

13. **Challenges by Members of the Public to Sealing Orders.** A party or interested member of the public has a right to challenge the sealing of particular documents that have been filed under seal, and the party asserting confidentiality will have the burden of demonstrating the propriety of filing under seal.

14. **Obligations on Conclusion of Litigation.**

(A) Unless otherwise agreed or ordered, this Order shall remain in force after dismissal or entry of final judgment not subject to further appeal.

(B) Within sixty-three days after dismissal or entry of final judgment not subject to further appeal, all Confidential Information and documents marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" under this Order, including copies as defined in ¶ 3 A, shall be returned to the producing party unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; (2) the parties agree to destruction to the extent practicable in lieu of return; (3) the receiving party shall destroy documents containing Confidential Information and certify the fact of destruction, and that the receiving party shall not be required to locate, isolate and return e-mails (including attachments to e-mails) that may include Confidential Information, or Confidential information contained in deposition transcripts or drafts or final expert reports; or, (4) as to documents bearing the notations, summations, or other mental impressions of the receiving party, that party elects to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney

work product, including an index that refers or relates to designated Confidential Information so long as that work product does not duplicate verbatim substantial portions of Confidential Information, and one complete set of all documents filed with the Court including those filed under seal. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation provided that its use does not disclose or use Confidential Information.

(C) **Deletion of Documents Filed under Seal from ECF System.** Filings under seal shall be deleted from the ECF system only upon order of the Court.

15. **Order Subject to Modification.** This Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

16. **No Prior Judicial Determination.** This Order is entered for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any document or material designated Confidential Information by counsel or the parties is entitled to protection under Rule 25(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

17. **Persons Bound.** This Order shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms.

This having come before the Court on Plaintiff James A. Bigelow Motion for a Protective Order, the Court having reviewed all pleadings filed related to the motion, and the Court having reviewed the pleadings and papers on file herein, it is hereby:

1 ORDERED that Plaintiff James A. Bigelow Motion for a Protective Order is
2 GRANTED.

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4 IT IS SO ORDERED.
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HONORABLE BENJAMIN H. SETTLE
8 UNITED STATES DISTRICT COURT JUDGE

9 Presented by:

10 /s/ James A. Bigelow

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14 360-790-2568
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